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No. 339

IN THE

Supreme Court of the United States

TERM, 1975

BUFFALO FORGE COMPANY,

Petitioner,

—*vs*—

UNITED STEELWORKERS OF AMERICA AFL-CIO; I. W. ABEL as International President, MITCHELL F. MAZUCA, Individually and as District Director, and JOHN GRUKA, Individually and as International Representative of the United Steelworkers of America, AFL-CIO, Local Union 1874 of the United Steelworkers of America AFL-CIO, VALENTINE F. ZIZZI, Individually and as President, and VALENTINE OLEJNICZAK, Individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO; Local Union No. 3732 of the United Steelworkers of America AFL-CIO KERMIT HASELEY, Individually and as President, et al.,

Respondents.

BRIEF AMICUS CURIAE
of
Associated Industries of New York State, Inc.
In Support of Petitioner

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In Support of Petitioner

QUESTION PRESENTED

Whether a Federal District Court may temporarily enjoin a labor union strike in violation of a collective bargaining contract's no-strike clause.

INTEREST OF THE AMICUS CURIAE

This brief is filed pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States. Both

counsel for petitioner and counsel for respondent have stated that the respective parties consent to the filing of this brief.

Associated Industries of New York State, Inc. has since its founding in 1914 served as the "Voice of Industry" in New York State. The Association has approximately 1,800 member companies having offices and plants in every part of the State of New York. Both manufacturing and non-manufacturing companies, representing total business activities of many billions of dollars annually, are included within the membership. While Associated Industries numbers among its members many of the largest corporations in America, the vast majority of its membership is composed of companies having a payroll of less than 200 employees. It therefore speaks for the small employer as well as the large and particularly so in the present situation where it is the small employer who is without adequate redress under the present state of the law.

The Association is filing this brief to emphasize to the Court the extremely important nature of this case and the effect that it will have not only on employers in New York State but throughout the nation in the event that the relief requested is not afforded.

POINT I

THE PRINCIPLE ADOPTED BY THE SUPREME COURT OF THE UNITED STATES IN BOYS MARKET REQUIRE THE GRANTING OF A PRELIMINARY INJUNCTION.

One of the most fundamental federal policies implicit in the development of the American body of labor law is the emphasis on the importance of arbitration for resolving disputes between labor and management. The Supreme Court has consistently emphasized this policy to promote peaceful settlement of labor disputes through

arbitration most pointedly in the "Steelworker Trilogy" (United States Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior and Gulf Nab. Co., 363 U.S. 574 (1960); United States Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960).

Despite this continuing primary emphasis on the importance of arbitration, the Supreme Court of the United States, particularly in Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962), failed to adhere to its policy of favoring binding arbitration by holding that the anti-junction provisions of the Norris-LaGuardia Act precluded a federal district court from enjoining a strike in breach of a no-strike obligation under a collective bargaining agreement even though the agreement contained provisions for binding arbitration.

It was not until 1969 in Boys Market v. Retail Clerk's Union, 398 U.S. 235 (1969) that the Supreme Court of the United States recognized the contradiction between Sinclair and the Steelworker's Trilogy doctrine and held that a strike or work stoppage by a union against an employer with whom it had a collective bargaining agreement which contained a no strike clause and a provision providing for binding arbitration of grievances could be enjoined from continuing that strike or work stoppage. The Court stated in that case at page 253:

> "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. The dissenting opinion in Sinclair suggested the following principles for the guidance of the district court in

determining whether to grant injunctive relief — principles that we now adopt:

'A District court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect; that the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.' 370 U.S., at 228. (Emphasis in original.)"

The collective bargaining agreement between Buffalo Forge and the defendant locals dated January 9, 1973 states:

"Section III ¶ 14 - In addition to their responsibilities that may be provided elsewhere in this agreement the following shall be observed:

b. There shall be no strikes, work stoppages or interruption or impeding of work. No officers or representatives of the union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The

union recognizes its possible liability for viclation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by union officers or union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such contact and shall not result in any disciplinary actions against the officers, committeemen or stewards involved.

d. There shall be no lockout."

The contract also contains a broad grievance procedure section:

"Section 5 ¶ 26. Should differences arise between the company and any employee covered by this agreement as to the meaning and application of the provisions of this agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner: ..."

Under Section 5 ¶ 32, final decision of the arbitrator is to be binding.

Does the action of the defendant locals in permitting if not encouraging its members to engage in a work stoppage by refusing to cross their sister locals' picket line justify the granting of an injunction. Certainly a unilateral work stoppage in direct violation of Section III paragraph 14 gives rise to a "difference" between the union and the company and the collective bargaining agreement provides for the arbitration of disputes.

Therefore this dispute meets the criteria of Boys Market that the Court must find (1) that the strike is in breach of a no-strike obligation under an effective agreement; (2) that the strike is over an arbitrable

grievance; and (3) that both parties are contractually bound to arbitrate the underlying grievance which caused the strike.

Granting that the application of Buffalo Forge meets this criteria, is an injunction warranted under ordinary principles of equity as set forth in the dissenting opinion in Sinclair, supra? The employer who has in good faith negotiated an agreement with his production and maintenance men through the arduous process of collective bargaining finds his work in vain. The defendant locals disregarding their contractual commitments are using their economic strength in support of the clerical local. Unless an injunction is granted in such a situation and the conduct of the union be arbitrated the employer can anticipate the whiplash again from the clerical local, assuming a contract is negotiated, if an impasse subsequently occurs in bargaining between the production and maintenance locals and the employer. Conduct such as this cries for injunctive relief and the settlement of controversy by arbitration.

POINT II

THE APPLICATION OF THE BOYS MARKET DOCTRINE TO THIS FACT SITUATION IS SUPPORTED BY COGENT LEGAL PRECEDENT.

The fallacy in the reasoning of the courts who have denied injunctive relief in similar proceedings is illustrated by the language of the court in Amstar Corporation v. Amalgamated Meat Cutters & Butcher Workmen of North America, 468 F.2d 1372, 1373 (5th Cir. 1972).

> "The strike by the Chalmette employees was not 'over a grievance' which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute - the validity under the union's no strike obligation of the member-employees honoring the ILA picket line. Were

> we to hold that the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrable underlying dispute for a Boys Markets injunction to issue, it is difficult to conceive of any strike which could not be so enjoined."

The Court completely ignores the fact that the only strikes that can be enjoined are those in breach of a no-strike obligation under an effective collective bargaining agreement where the strike is over an arbitrable grievance, namely, the failure of the employees to report to work according to the terms of their collective bargaining agreement.

In Simplex Wire and Cable Co. v. Local 2208 of the International Brotherhood of Electrical Workers, 314 F. Supp. 885-886 (D.C. N.H. 1970) the Court again misunderstood and stated the underlying grievance was the work stoppage itself. Also in that case the collective bargaining agreement stated:

> "The Union agrees that it will not cause or sanction a strike or work stoppage and the Company agrees that it will not engage in a lockout because of any disputes over matters relating to this Agreement. The Union further agrees that it will take prompt action to urge any or all employees engaged in a strike or work stoppage in violation of this Agreement to return to work. There shall be no responsibility on the part of the Union, its officers, representatives, or affiliates for any strike or other interruptions of work unless specifically provided for in this Agreement." (Emphasis added.)

This terminology contrasts with the language in the Buffalo Forge Agreement:

> "There shall be no strikes, work stoppages or interruption or impeding of work."

Again in General Cable Corporation v. The International Brotherhood of Electrical Workers, 331 F. Supp. 478 (D.C. Md. 1971) the Court indulged in sophistry to state the strike or work stoppage was not over a grievance which was subject to arbitration under the collective bargaining agreement because the grievance between the Company and Local was the result of the strike not the cause of it.

It is suggested that those courts which have denied injunctive relief should re-examine Justice Brennan's dissenting opinion in Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) which seven years before its time clearly foreshadowed the Boys Market Doctrine.

At page 224 Judge Brennan stated:

> "I emphasize that the question in this case is not whether the basic policy embodied in Norris-LaGuardia against the injunction of activities of labor unions has been abandoned in actions under § 301; the question is simply whether injunctions are barred against strikes over grievances which have been routed to arbitration by a contract specifically enforceable against both the union and the employer. Enforced adherence to such arbitration commitments has emerged as a dominant motif in the developing federal law of collective bargaining agreements. But there is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail. Insistence upon strict application of Norris-LaGuardia to a strike over a dispute which both parties are bound by contract to arbitrate threatens a leading policy of our labor relations law. But there may be no such threat if the union has made no binding

> agreement to arbitrate; and if the employer cannot be compelled to arbitrate, restraining the strike would cut deep into the core of Norris-LaGuardia. Therefore, unless both parties are so bound, limiting an employer's remedy to damages might well be appropriate. The susceptibility of particular concrete situations to this sort of analysis shows that rejection of an outright repeal of § 4 was wholly consistent with acceptance of a technique of accommodation which would lead, in some cases, to the granting of injunctions against concerted activity. Accommodation requires only that the anti-injunction policy of Norris-LaGuardia not intrude into areas, not vital to its ends, where injunctive relief is vital to a purpose of § 301; it does not require unconditional surrender."

The relief requested by the plaintiff in this litigation is consistent with Justice Brennan's views.

In Barnard College v. Transport Workers Union of America, AFL-CIO, 372 Fed. Supp. 211 (S.D. N.Y. 1974) District Judge Weinfeld in granting the injunction stated at page 212:

> "Essentially, the parties differ as to whether section 28 of the collective bargaining agreement, the no-strike clause, is applicable where the union members fails to report to work because of refusal to cross a picket line of another union; plaintiff contends that it is applicable; defendants, that it is not. It is the union's further position that this dispute over the scope of the no-strike provision in section 28 is not a 'difference,' within the meaning of section 28—that it is not arbitrable. There is, however, a strong federal policy in favor of the arbitration of labor disputes, and '[a]n order to arbitrate the particular grievance should not be denied unless it may be said

with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.' Here, the terms of the no-strike provision are all encompassing and without limitation."

The collective bargaining agreement between Barnard College and the Transport Worker's Union is similar to the contract between Buffalo Forge and the Steelworker locals in that the terms of the no-strike provision in both contracts are all encompassing and without limitation.

It is submitted that the same reasoning should be applied to a determination of the issue before this Court.

The great weight of cogent judicial authority supports this premise. See Monongahela Power Co. v. Local No. 2332 IBEW, 484 F.2d 1209, (4th Cir. 1973); Inland Steel Co. v. Local Union No. 1545, United Mineworkers, 43LW2205 (7th Cir. 1974); Napa Pittsburgh Inc. v. Automotive Chauffers Local No. 926, 87 LRRM 2044 (3rd Cir. 1974); Wilmington Shipping Co. v. Longshoremen, 86 LRRM 2843 (4th Cir. 1974) cert. den. 11-18-74, 87 LRRM 2716.

POINT III

PUBLIC POLICY DICTATES A BROAD INTERPRETATION OF THE BOYS MARKET DOCTRINE.

It is ancient lore that the Norris-LaGuardia Act (§ 447 Stat. 70, 29 U.S.C. § 104) came into being because the Federal District Judges through their broad use of injunctive power forced the laboring man to disregard his unions picket line and in effect to become a strike breaker. Equally as ancient but now antiquated

was the theory that labor legislation was needed to equalize the bargaining power of the nascent unions with entrenched management. These times have changed and it is few who would argue that the small or medium sized employer is far out-weighed in economic strength in collective bargaining negotiations with an international union.

The recent successes of the union movement in organizing clerical locals in plants where only production and maintenance locals were formally organized has exacerbated the imbalance in economic strength. Now through the use of staggered contract termination dates, a union can whipsaw an employer by shutting down his plant when an impasse occurs either in the clerical negotiations or in the production and maintenance contract negotiations even though the other unit is contractually bound to a no-strike or work stoppage agreement. The number of actions now reaching the courts brought under Section 301 are marked testimony to this.

The holdings of the National Labor Relations Board in Gary-Hobart Water Corp., 1974, CCH, NLRB ¶26516 and in Laconia Shoe Co., Inc., 74-75 CCH ¶15325 compound the dilemma.

Worst, however, is yet to come, unless the use of injunctive relief is available in such cases as this. The recent legislation bringing not-for-profit health facilities under federal jurisdiction will precipitate disaster in the health service industry unless the Boys Market doctrine is held to cover situations such as arose at Buffalo Forge. Traditionally, where organized health facilities, because of the number and diversity of their employees, are multi-unit bargaining groups, if sympathy strikes or work stoppage are allowed whenever one of the multi-unit groups reaches a bargaining impass the health service industry and more importantly the patients it serve face anarchy.

CONCLUSION

It is urged that the judgment of the Circuit Court of Appeals be reversed.

Respectfully submitted,

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